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Commissioner of Customs Vs. Essar Projects Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-13-2003

Reported in : (2004)(165)ELT537Tri(Mum.)bai

Judge : S T Gowri

Appellant : Commissioner of Customs

Respondent : Essar Projects Ltd.

Judgement :

1. Essar Projects Ltd. imported an engine to be fitted on to its dumb barge. Examination of the engine showed it to have been subjected to use before importation; the examining officers certified that the goods had a residual life of longer than five years. The notice issued to the importer proposed confiscation of the engine under Clause (d) of Section 111 of the Act on the ground that these goods were not capital goods as claimed by the appellant but parts of a barge and hence required a licence. It also invoked Clause (m) of Section 111 of the Act on the ground that the description of the goods were misdeclared.

Adjudicating on the notice, the Commissioner accepting the contention of the assessee that the engine was capital goods held that no licence was required for the import. This appeal is against that order.

2. The sole ground in the appeal questions the Commissioner's conclusion that the goods were not misdeclared. The order of the Commissioner holding that the

charge of misdeclaration is not felicitously worded. The reason he advances for his conclusion is that the goods are held to be second-hand capital goods. It is this very fact that the goods were second-hand and not declared to be second-hand in the Bill of Entry that invited the invocation of Clause (m) of Section 111. The other contention on behalf of the respondent that there was no intent to misdeclare the goods and the importer would have stood to gain nothing by not specifically declaring the goods as second-hand has to be accepted. Had the examination of the goods revealed that because they were second-hand their import was prohibited, the confiscation under Clause (m) of Section 111 would be justified. However, the examination of the goods has shown that since they have a residual life of five years the condition subject to which import of secondhand goods was permitted, they were importable without a licence. It is significant that the appeal itself does not seek confiscation on this account. In this situation, ordering confiscation on the ground of misdeclaration was not called for.

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